

REMARKS

Claims 1 through 6 and 8 through 24 are pending.

Page 3 of the Action provides that the Action is final. However, Applicants respectfully submit that a final Action is premature.

It is not proper to make final a first Action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because new issues were raised that required further consideration and/or search. MPEP 706(b).

The Action is a first action subsequent to Applicants' request for continued examination filed November 10, 2005. The Advisory Action dated October 21, 2005 denied entry of amendments included in the response filed by Applicants on October 11, 2005. In particular, the Advisory Action provided that the proposed amendments raised new issues that would require further consideration and/or search. The response filed by Applicants on November 10, 2005 containing material (e.g., claim 1) presented after final rejection but denied entry. Therefore, Applicants respectfully submit a final action is improper. Reconsideration and withdrawal of the finality of the Action is respectfully requested.

The Action rejects claims 1 through 6 and 8 through 24 under 35 U.S.C. §102(b) over U.S. Patent No. 3,070,870 to Alexander et al. ("Alexander").

Applicants respectfully traverse these rejections.

Claim 1 requires "a transparent layer", "an intermediate layer", and "a support layer".

Alexander has a lace layers 7,8, an interlining 19, and a second cup layer 17. Here, the second cup layer 17 is a soft tulle lining faced inward for comfort. Interlining

19 is a net of course mono-filaments that is naturally stiff.

Thus, the portion of Alexander that the Action asserts as being the claimed "support layer" is the soft comfort tulle (e.g., lace) layer 17. More particularly, the Action states that this soft layer provides support as broadly claimed since any additional layer would provide support.

Applicants disagree.

It is simply not possible for the soft layer of Alexander to provide any support since this layer is attached to the interlining 19 that is stiff. How can a soft layer support a stiff one?

Therefore, the soft cup layer 17 of Alexander does not disclose or suggest the "support layer" of claim 1.

Claim 1 also requires that the intermediate layer is "for adhering or fusing said transparent layer and said support layer".

In contrast, Alexander discloses that the fabric can be prepared for molding by padding it with a composition of water and thermosetting resin, thermoplastic resin and silicone resin that when used in large quantities also can adhere the fabric layers together. See col. 7, line 65 to col. 8, line 9.

Accordingly, the interlining 19 of Alexander is a stiff support layer but it is not for adhering or fusing said transparent layer and said support layer. Rather, Alexander discloses that the composition of resins used in large quantities, and not the interlining, adheres the fabric layers together.

Therefore, the interlining 19 of Alexander does not disclose or suggest the intermediate layer of claim 1 that adheres or fuses the transparent layer and the support

layer.

Claims 2 through 6 and 8 depend from claim 1, and, thus, are also not disclosed or suggested by Alexander.

Claim 5 provides the undergarment of claim 4, and further includes that the support layer is "a support material having elastic characteristics."

Alexander provides that the "yarns of the fabric comprise filaments which are thermoplastic." (col. 3, line 20-21). Alexander further provides "thermosetting resin has the predominant effect on the textile finish and properties of the goods, such as permanence of hand, enhanced crease resistance and appearance." (col. 7, line 74 through col. 8, line 2). Alexander also provides that the "essential attributes that must accompany any brassiere cups to render them commercial includes comfort to the wearer, that they be fabricated from textile materials, that they have permanence of form." (col. 1, lines 51-54). Thus, Alexander fails to disclose or suggest a support material having elastic characteristics, as recited by claim 5. Rather, Alexander provides planar fabrics that have thermosetting resin that results in "permanence of form".

Claim 8 provides the undergarment of claim 1, and further includes that the support layer "is open adjacent said lower and said side breast profile." Support for the amendment to claim 8 may be found at least at page 7, lines 24 through 27 and Figures 1 and 2.

As clearly shown in Figures 1, 7, and 9 of Alexander, all of the planar fabric is continuous in the finished molded cups identified by reference numerals 7 and 8. Thus, Alexander fails to disclose or suggest that the support layer is open adjacent the lower and the side breast profile, as recited in claim 8.

Independent claim 9 recites "a seamless support layer", "a seamless transparent

layer”, and “an adhesive or fusing layer,” where the adhesive or fusing layer “securely adheres or fuses said seamless transparent layer to said seamless support layer.”

As discussed above for claim 1, the interlining 19 of Alexander fails to disclose or suggest an intermediate layer for adhering or fusing the transparent layer and the support layer. Similarly, Alexander also fails to disclose or suggest that the adhesive or fusing layer securely adheres or fuses the seamless transparent layer to the seamless support layer, as recited by claim 9.

Claims 10 through 13 depend from claim 9, and, thus, are also not disclosed or suggested by Alexander.

Furthermore, claim 13 provides that the support layer is “open adjacent said lower and said side breast profile.”

As discussed above for claim 8, Alexander fails to disclose or suggest that the support layer is open adjacent the lower and the side breast profile, as recited in claim 13.

Independent claim 14 recites, in part, the step of “adhering or fusing the support layer with the adhesive or fusing layer to a transparent layer to provide seamless connection.”

As discussed above for claim 1, Alexander fails to disclose or suggest an intermediate layer for adhering or fusing the transparent layer and the support layer. Similarly, Alexander also fails to disclose or suggest adhering or fusing the support layer with the adhesive or fusing layer to a transparent layer to provide seamless connection, as recited in claim 14.

Further Alexander does not provide seamless connection. See Figure 8.

Additionally, claim 14 requires "cutting said support layer combined with said adhesive or fusing layer to a desired shape." In contrast, Alexander provides "a finished fabric 1 having two cups 7 and 8 molded therein. When such a pair is produced, it is practical to sew it as a unit into a brassiere assembly. It is also possible to produce cups 7 and 8 together as a unit and then to mount them after trimming singly into a brassiere assembly such as 9." (col. 8, lines 73 – col. 9, line 3).

Thus, Alexander clearly molds all of the planar layers prior to trimming. Therefore, Alexander fails to disclose or suggest cutting the support layer combined with the adhesive or fusing layer to a desired shape, as recited by claim 14.

Claims 15 through 18 depend from claim 14, and, thus, are also not disclosed or suggested by Alexander.

Further, dependent claim 17 provides the method of claim 15, and also includes that the support layer is "a material having elastic characteristics."

As discussed above for claim 5, Alexander discloses planar fabrics that have "permanence of form" and, not, elastic characteristics as in claim 17.

In addition, claim 18 provides that the support layer is "open adjacent said lower and said side breast profile."

As discussed above for claim 8, Alexander fails to disclose or suggest that the support layer is open adjacent the lower and the side breast profile, as recited in claim 18.

Independent claim 19 provides "a support layer", "a transparent layer", "an intermediate layer", where the intermediate layer is "for adhering or fusing an outer surface of said transparent layer and an inner surface of said support layer."

As discussed above for claim 1, the interlining 19 of Alexander fails to disclose or suggest an intermediate layer for adhering or fusing the transparent layer and the support layer. Similarly, Alexander also fails to disclose or suggest that the intermediate layer is “for adhering or fusing an outer surface of said transparent layer and an inner surface of said support layer”, as recited in claim 19.

Claim 19 also requires that the support layer “is open adjacent said lower and said side breast profile.”

As discussed above for claim 8, Alexander fails to disclose or suggest that the support layer is open adjacent the lower and the side breast profile, as recited in claim 19.

Claims 20 through 24 depend from claim 19, and, thus, are also not disclosed or suggested by Alexander.

Dependent claim 21 provides the undergarment of claim 19, and further includes that “said intermediate layer is selectively applied to a portion of the brassiere.”

Dependent claim 22 provides the undergarment of claim 21, and further includes that “said portion comprises a lower portion that corresponds to a wearer’s breasts.”

Alexander fails to disclose or suggest that the intermediate layer is selectively applied to a portion of the brassiere, as recited by claim 21, let alone that the portion comprises a lower portion that corresponds to a wearer’s breasts, as recited by claim 22. Alexander merely provides that “a second cup layer which may be fabricated in the same manner and molded to conform to the lace layers 7, 8” and an “interlining 19 which is also identical in fabrication and molding to the lace layers 7, 8 may also be provided.” (col. 7, lines 54-56 and lines 58-60).

Claim 24 provides the undergarment of claim 19, and also includes that “said

intermediate layer is elastic.”

The Action asserts that Alexander has an intermediate layer 19. The innerlining 19 of Alexander “may be fabricated as a net of coarse mono-filaments which is naturally stiff and will give the desired shaping and uplifting to the assembly.” (col. 7, lines 58-63). Thus, Alexander fails to disclose or suggest an intermediate layer that is elastic, as recited by claim 24. Rather, Alexander provides that the innerlining 19 is stiff.

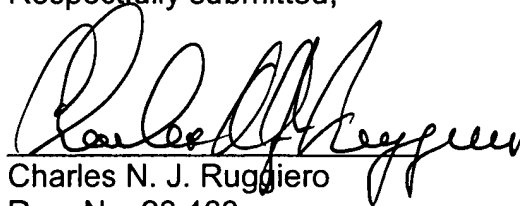
Accordingly, reconsideration and withdrawal of the 102(b) rejections to claims 1 through 6 and 8 through 24 are respectfully requested.

In view of the foregoing, Applicants respectfully submit that the present application is in condition for allowance. If for any reason the Examiner feels that consultation with Applicants’ attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

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